



Jon Gerhardson <jon.gerhardson@gmail.com>

PUBLIC RECORDS REQUEST: requests for internet logs

7 messages

Jon Gerhardson <jon.gerhardson@gmail.com>

Wed, May 1, 2024 at 10:22 PM

To: recordsreq@celd.com

1 May 2024

Dear RAO,

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

- *Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Crossroads Fiber as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)*

- *All communications between Chicopee Electric Light and the requestors of this information.*

- *Note that I myself am not requesting any customer logs, nor do I believe such logs would be considered public records, except perhaps in the case of legally served warrants (I'm not sure about that one). In any case, I'd prefer at this time to not be provided with any actual logs of customers.*

This request is non-commercial in nature, and I kindly request that any fees which may be assessed pursuant to the Public Records Law be waived, as recommended by the Secretary of the Commonwealth. If this is not possible, please provide a reasonable estimate of the cost to fulfill this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. Please provide these records in a digital format by email attachment sent to jon.gerhardson@gmail.com.

Thank you.

Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com

Natalie Colberg <ncolberg@celd.com>

Mon, May 6, 2024 at 12:56 PM

To: Jon Gerhardson <jon.gerhardson@gmail.com>

Good Afternoon Jonathan,

There are three documents responsive to your request. All three documents are exempt from disclosure under MGL ch. 4 sec. 7(26)(f).

Thanks,

Natalie

[Quoted text hidden]

CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

Jon Gerhardson <jon.gerhardson@gmail.com>
To: Natalie Colberg <ncolberg@celd.com>

Mon, May 6, 2024 at 1:11 PM

Natalie,

Just so we're on the same page the exemption you are claiming is:

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

Am I correct in interpreting that this would exclude warrants issued by a judge?

Thanks.

Best,
Jon

[Quoted text hidden]

Natalie Colberg <ncolberg@celd.com>
To: Jon Gerhardson <jon.gerhardson@gmail.com>

Mon, May 6, 2024 at 2:01 PM

Jon, This will confirm none of these documents are warrants signed by judges. Thanks, Natalie

[Quoted text hidden]

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: Natalie Colberg <ncolberg@celd.com>

Mon, May 6, 2024 at 2:02 PM

Thank you for the clarification. I am appealing this decision. Please feel free to give me a call if you feel the need to at 413-313-1069

Best,
Jon

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: pre@sec.state.ma.us

Mon, May 6, 2024 at 2:03 PM

Dear Secretary of Commonwealth's office,

I would like to appeal this decision regarding my public records request to Chicopee Electric Light. I do so for two

reasons:

1. I asked for "*Warrants, subpoenas, or other requests.*" To the best of my knowledge, warrants and subpoenas are presumed to be public records. Perhaps there is a case to be made for redacting information on them if they are active warrants, but I do not believe wholesale withholding is ~~warranted~~-appropriate here.

As for "other requests," if these are exempt under section (f) I have serious questions about potential 4th amendment violations that may be occurring.

2. That there would only be three records seems exceedingly unlikely. This email chain alone is 4 separate records, (4 .eml files) and is certainly much less complicated than any potentially exempt records that CEL may have.

I therefore request that the state review this appeal and take appropriate action to enforce the Public Records Law.

Thanks!

Best,

Jonathan Gerhardson

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: pre@sec.state.ma.us

Mon, May 6, 2024 at 2:03 PM

[Quoted text hidden]

----- Forwarded message -----

From: Jon Gerhardson <jon.gerhardson@gmail.com>

To: recordsreq@celd.com

Cc:

Bcc:

Date: Wed, 1 May 2024 22:22:30 -0400

Subject: PUBLIC RECORDS REQUEST: requests for internet logs

1 May 2024

Dear RAO,

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

- *Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Crossroads Fiber as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)*

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- *Note that I myself am not requesting any customer logs, nor do I believe such logs would be considered public records, except perhaps in the case of legally served warrants (I'm not sure about that one). In any case, I'd prefer at this time to not be provided with any actual logs of customers.*

This request is non-commercial in nature, and I kindly request that any fees which may be assessed pursuant to the Public Records Law be waived, as recommended by the Secretary of the Commonwealth. If this is not possible, please provide a reasonable estimate of the cost to fulfill this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. Please provide these records in a digital format by email attachment sent to jon.gerhardson@gmail.com.

Thank you.

Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com

----- Forwarded message -----

From: Natalie Colberg <ncolberg@celd.com>

To: Jon Gerhardson <jon.gerhardson@gmail.com>

Cc:

Bcc:

Date: Mon, 6 May 2024 16:56:58 +0000

Subject: RE: PUBLIC RECORDS REQUEST: requests for internet logs

Good Afternoon Jonathan,

There are three documents responsive to your request. All three documents are exempt from disclosure under MGL ch. 4 sec. 7(26)(f).

Thanks,

Natalie

From: Jon Gerhardson <jon.gerhardson@gmail.com>

Sent: Wednesday, May 1, 2024 10:23 PM

To: Records Request <recordsreq@celd.com>

Subject: PUBLIC RECORDS REQUEST: requests for internet logs

1 May 2024

Dear RAO,

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

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jon.gerhardson@gmail.com

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2 attachments

PUBLIC RECORDS REQUEST requests for internet logs(1).eml

5K



PUBLIC RECORDS REQUEST requests for internet logs.eml

17K



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

May 6, 2024
SPR24/1374

Jonathan Gerhardson
VIA EMAIL
MA

Dear Mr. Gerhardson:

I have received your letter appealing the response of Chicopee Electric Light to your request for records.

I have directed a member of my staff, Jeffrey Gottfredsen, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Manza Arthur".

Manza Arthur
Supervisor of Records

cc: Natalie Colberg

From: [Jon Gerhardson](#)
To: [SEC-DL-PREWEB](#)
Subject: Fwd: PUBLIC RECORDS REQUEST: requests for internet logs
Date: Monday, May 6, 2024 2:03:23 PM

Dear Secretary of Commonwealth's office,

I would like to appeal this decision regarding my public records request to Chicopee Electric Light. I do so for two reasons:

1. I asked for "*Warrants, subpoenas, or other requests.*" To the best of my knowledge, warrants and subpoenas are presumed to be public records. Perhaps there is a case to be made for redacting information on them if they are active warrants, but I do not believe wholesale withholding is ~~warranted~~ appropriate here.

As for "other requests," if these are exempt under section (f) I have serious questions about potential 4th amendment violations that may be occurring.

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Thanks!

Best,

Jonathan Gerhardson

----- Forwarded message -----

From: **Jon Gerhardson** <jon.gerhardson@gmail.com>

Date: Mon, May 6, 2024 at 1:11 PM

Subject: Re: PUBLIC RECORDS REQUEST: requests for internet logs

To: Natalie Colberg <ncolberg@celd.com>

Natalie,

Just so we're on the same page the exemption you are claiming is:

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

Am I correct in interpreting that this would exclude warrants issued by a judge?

Thanks.

Best,

Jon

On Mon, May 6, 2024 at 12:57 PM Natalie Colberg <ncolberg@celd.com> wrote:

Good Afternoon Jonathan,

There are three documents responsive to your request. All three documents are exempt from disclosure under MGL ch. 4 sec. 7(26)(f).

Thanks,

Natalie

From: Jon Gerhardsen <jon.gerhardsen@gmail.com>

Sent: Wednesday, May 1, 2024 10:23 PM

To: Records Request <recordsreq@celd.com>

Subject: PUBLIC RECORDS REQUEST: requests for internet logs

1 May 2024

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Thank you.

Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com

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From: [Jon Gerhardson](mailto:jon.gerhardson@celld.com)
To: recordsreg@celd.com
Subject: PUBLIC RECORDS REQUEST: requests for internet logs

1 May 2024

Dear RAO,

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Thank you.

Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com

From: [Natalie Colberg](#)
To: [Jon Gerhardson](#)
Subject: RE: PUBLIC RECORDS REQUEST: requests for internet logs
Date: Monday, May 6, 2024 12:57:11 PM

Good Afternoon Jonathan,

There are three documents responsive to your request. All three documents are exempt from disclosure under MGL ch. 4 sec. 7(26)(f).

Thanks,

Natalie

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Wednesday, May 1, 2024 10:23 PM
To: Records Request <recordsreq@celd.com>
Subject: PUBLIC RECORDS REQUEST: requests for internet logs

1 May 2024

Dear RAO,

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Sincerely,

Jonathan Gerhardson

jon.gerhardson@gmail.com

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Jon Gerhardson <jon.gerhardson@gmail.com>

RE: SPR24/1374 Appeal - Response 5/14/24

6 messages

John J. Ferriter <jferriter@ferriter.com>

Tue, May 14, 2024 at 10:04 AM

To: Jon Gerhardson <jon.gerhardson@gmail.com>Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Natalie Colberg <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Good morning,

The City believes exemptions (a) and (f) extend to the emails as “requests” or “inquiries.” If you know of any Mass. case that holds otherwise, please email us a copy.

1. The subpoena from the Mass. DA cites 18 USC sec. 2703 and sec. 2705, and provides “you are hereby instructed NOT TO DISCLOSE the existence of this request, as any such disclosure could endanger the life or physical safety of an individual”(emphasis in original). The instruction includes the “existence of this request”, not just the subpoena itself.
2. The subpoena from the Mass. AG cites 18 USC 2705 and provides “to not disclose the existence of this request” as disclosure would “hinder the investigation.” An email is evidence of the “existence of the request.” Once again, please send any case that holds the contrary.
3. The subpoena from the Penn. DA cites 18 Pa CS 5742.1 to provide to not disclose “the existence of this subpoena inquiry” as it would “impede the investigation being conducted” relating to sexual abuse of children. The prohibition extends to the “inquiry” which would include an email. Please share any case to the contrary.

Respectfully,

John J. Ferriter, Esquire

FERRITER LAW***Serving Businesses & Municipalities Since 1957***

FERRITER & FERRITER LLC

1669 Northampton Street, Holyoke, MA 01040

413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Jon Gerhardson <jon.gerhardson@gmail.com>

Sent: Thursday, May 9, 2024 3:22 PM

To: John J. Ferriter <jferriter@ferriter.com>

Cc: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Natalie Colberg <ncolberg@celd.com>; Debbie A. Beaudry <dbeaudry@ferriter.com>

Subject: Re: SPR24/1374 Appeal - Response

Thanks for this.

I also asked for records of communications between Chicopee/CELD and the issues of these subpoenas. Are there no emails etc. discussing these?

On Thu, May 9, 2024, 12:27 PM John J. Ferriter <jferriter@ferriter.com> wrote:

We are correcting the email for Mr. Gerhardson. Thank you.

FERRITER LAW

Serving Businesses & Municipalities Since 1957

FERRITER & FERRITER LLC

1669 Northampton Street, Holyoke, MA 01040

413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>

Sent: Thursday, May 9, 2024 12:23 PM

To: John J. Ferriter <jferriter@ferriter.com>; jon.gerhardson@gmail.com

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; ncolberg@celd.com; Debbie A. Beaudry <dbeaudry@ferriter.com>

Subject: RE: SPR24/1374 Appeal - Response

Good afternoon,

Thank you for your email.

Regards,

Jeff Gottfredsen

Senior Attorney | Public Records Division

Office of the Secretary of the Commonwealth

One [Ashburton Place, Room 1719](#) | [Boston, MA 02108](#)

617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

From: John J. Ferriter <jferriter@ferriter.com>

Sent: Thursday, May 9, 2024 12:09

To: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>; on.gerhardson@gmail.com

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; ncolberg@celd.com; Debbie A. Beaudry <dbeaudry@ferriter.com>

Subject: FW: SPR24/1374 Appeal - Response

Dear Mr. Gottfredsen,

We represent the City of Chicopee Electric Light Department (City) and your email below from yesterday was referred to us for reply.

The City received the following subpoenas investigating criminal sexual abuse of children during the relevant time period:

1. 10/2/23 from a Massachusetts District Attorney and ordering non-disclosure under 18 USC sec. 2703(c) and 2705(1)(B).
2. 12/11/23 from the Massachusetts Attorney General and ordering non-disclosure under 18 USC sec. 2705.
3. 3/18/24 from a Pennsylvania District Attorney and ordering non-disclosure under 18 Pa. C.S. 5743.1(a)(7).

The City believes exemptions (a) and (f) prevent disclosure. Exemption (a) applies based on the specific statutes cited above by each law enforcement agency. Exemption (f) applies because each law enforcement agency certified

each subpoena was issued as part of an active criminal investigation, and indicated disclosure could endanger the life or safety of a person or result in destruction of evidence.

The City supports law enforcement agencies and does not want to jeopardize any ongoing investigations or jeopardize the safety of anyone.

Sincerely,

John J. Ferriter, Esquire

FERRITER LAW

Serving Businesses & Municipalities Since 1957

FERRITER & FERRITER LLC

1669 Northampton Street, Holyoke, MA 01040

413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Tuesday, May 7, 2024 3:55 PM
To: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Cc: Natalie Colberg <ncolberg@celd.com>; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: Re: SPR24/1374 Appeal Acknowledgement

Jefferey Gottfredsen,

I am in receipt of this email. I believe the wording of my original appeal lacked some clarity that I would like to amend now. Specifically, I believe under the law, CEL has an obligation to list the document and describe the reason for each record's withholding. I do not believe they can simply say a number of documents exist and they're all exempt.

I'd also like to point out that if any of the records in question may have been generated by the federal government, they are still responsive to my request. I can't know if that's the case here due to the RAO's vagueness in their response, but I suspect it is a possibility. See RAHIMAH RAHIM vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT ([SJC-12884](#)).

On Mon, May 6, 2024 at 4:40 PM Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us> wrote:

Dear Records Custodian,

This office has received an appeal relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you are able to provide further information or have any questions relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832.

Given that the Supervisor of Records must issue a determination within ten business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Thank you,

Jeff Gottfredsen

Senior Attorney | Public Records Division

Office of the Secretary of the Commonwealth

One [Ashburton Place, Room 1719 | Boston, MA 02108](#)

617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

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Jon Gerhardson <jon.gerhardson@gmail.com>
To: Beryl Lipton <beryl@eff.org>

Tue, May 14, 2024 at 12:08 PM

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: Beryl Lipton <beryl@eff.org>

Tue, May 14, 2024 at 12:33 PM

Beryl,

I'm assuming you're a lawyer or at least within shouting distance of one. I'm also a night owl and haven't had any coffee yet today. So I could be off base here, but I'm looking at 18 USC 2703 (c) and am not sure a subpoena meets the standard for exemption -- it needs to be a court order or warrant. Do you disagree?

Additionally, is Pennsylvania law enforceable in Massachusetts in this way?

CTRL+V from <https://www.law.cornell.edu/uscode/text/18/2703> below

Best,
Jon

(c) Records Concerning Electronic Communication Service or Remote Computing Service.—

(1) A [governmental entity](#) may require a provider of electronic communication service or [remote computing service](#) to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the [governmental entity](#)—

(A)

obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures and, in the case of a court-martial or other proceeding under chapter 47 of title 10 (the [Uniform Code of Military Justice](#)), issued under section 846 of that title, in accordance with regulations prescribed by the President) by a [court of competent jurisdiction](#);

(B)

obtains a court order for such disclosure under subsection (d) of this section;

(C)

has the consent of the subscriber or customer to such disclosure;

(D)

submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in [section 2325 of this title](#)); or

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: "John J. Ferriter" <jferriter@ferriter.com>

Sat, May 18, 2024 at 11:05 PM

John,

If you need me to formally appeal SPR24/1374 Determination before addressing what I've written below please advise. But regarding your response I do have some rebuttals.

1. You said

[The City received the following subpoenas investigating criminal sexual abuse of children during the relevant time period:](#)
emphasis added.

I did not specifically ask for "subpoenas investigating criminal sexual abuse of children," I asked for (paraphrasing myself) all requests for logs and did not specify a reason. Your wording, why you would point out these are specifically CSAM related, leads me to wonder if you misunderstood my original request, which was not intended to be about, nor do I believe made any mention or implication to child sexual abuse. Was there a misunderstanding that led you to accidentally narrow your search for records?

Regarding USC 2705(1)(B)

where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under [section 2703\(b\) of this title](#) for **a period not to exceed ninety days** upon the execution of a written certification of a [supervisory official](#) that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

Again, emphasis added.

It's been at the time of writing, 230 days since Oct 2 2023 and 160 days since Dec 11, 2023. Am I missing some reason this should be applicable?

Regarding the third subpoena mentioned, what authority does the city of Chicopee, or the state of Massachusetts have to enforce the laws of the state of Pennsylvania or any other state? I question the validity of withholding this for reasons described in the 10th Amendment to the US constitution. If you disagree, you may want to inform the state of Texas that I am in possession of marijuana, as they may wish to extradite me for prosecution. You can do that [here](#).

Best,
Jonathan Gerhardson

[Quoted text hidden]

John J. Ferriter <jferriter@ferriter.com>
To: Jon Gerhardson <jon.gerhardson@gmail.com>

Mon, May 20, 2024 at 11:18 AM

Good morning,

We think it best if you file an appeal.

We can tell you the referenced subpoenas and emails are the only documents responsive to your "request for logs".

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: "John J. Ferriter" <jferriter@ferriter.com>

Mon, May 20, 2024 at 11:29 AM

Okay will do no problem, thanks for letting me know.

[Quoted text hidden]



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

May 17, 2024
SPR24/1374

Natalie Colberg
Chicopee Electric Light
725 Front Street
Chicopee, MA 01020

Dear Ms. Colberg:

I have received the petition of Jonathan Gerhardson appealing the response of Chicopee Electric Light (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 1, 2024, Mr. Gerhardson requested the following:

- [1.] Warrants, subpoenas, or other requests for logs of internet traffic, its metadata, or other information generated through the use of Crossroads Fiber as an internet service provider from any person, agency, or other source made between May 1 2023 and May 1 2024. (Please exclude any self-requesters; i.e. a customer requesting a copy of their own internet traffic.)
- [2.] All communications between Chicopee Electric Light and the requestors of this information.

The City responded on May 6, 2024, denying the request, and claiming that the responsive records are exempt from disclosure under Exemption (f) of the Public Records Law. See G. L. c. 4, § 7(26)(f).

Subsequent to the opening of this appeal, I learned that the City provided a supplemental response by email to Mr. Gerhardson and this office on May 9, 2024 and again on May 14, 2024. As this appeal was opened based on the City's May 6th response, I will now consider this administrative appeal closed. If unresolved issues remain, Mr. Gerhardson may further appeal the substantive nature of the City's supplemental responses within ninety (90) days. See 950 C.M.R. 32.08(1).

Natalie Colberg
Page 2
May 17, 2024

SPR24/1374

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson
John J. Ferriter, Esq.



Jon Gerhardson <jon.gerhardson@gmail.com>

RE: SPR24/1374 Appeal - Responses 5/14/24 and 5/21/24

11 messages

John J. Ferriter <jferriter@ferriter.com>

Tue, May 21, 2024 at 10:06 AM

To: Jon Gerhardson <jon.gerhardson@gmail.com>, "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>

Cc: "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Good morning,

The City received the appeal dated 5/20/24 and replies as follows:

1. The subpoenas and emails discussed below are the only documents that exist that are responsive to the "request for logs." The City conducted a term search for all documents requested.
2. The "notification required under 18 USC 2703(b)" is to the City's "subscriber or customer of electronic communication service." The requester is not a subscriber of the City.
3. 18 USC 2705 provides the protection applies to documents "authorized by a Federal or State statute." This federal requirement encompasses the Pennsylvania law.

Thank you for your cooperation.

Respectfully,

John J. Ferriter, Esquire

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1669 Northampton Street, Holyoke, MA 01040

413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Saturday, May 18, 2024 11:06 PM
To: John J. Ferriter <jferriter@ferriter.com>
Subject: Re: SPR24/1374 Appeal - Response 5/14/24

John,

If you need me to formally appeal SPR24/1374 Determination before addressing what I've written below please advise. But regarding your response I do have some rebuttals.

1. You said

The City received the following subpoenas **investigating criminal sexual abuse of children** during the relevant time period:

emphasis added.

I did not specifically ask for "subpoenas investigating criminal sexual abuse of children," I asked for (paraphrasing myself) all requests for logs and did not specify a reason. Your wording, why you would point out these are specifically CSAM related, leads me to wonder if you misunderstood my original request, which was not intended to be about, nor do I believe made any mention or implication to child sexual abuse. Was there a misunderstanding that led you to accidentally narrow your search for records?

Regarding USC 2705(1)(B)

where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under [section 2703\(b\) of this title](#) for **a period not to exceed ninety days** upon the execution of a written certification of a [supervisory official](#) that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

Again, emphasis added.

It's been at the time of writing, 230 days since Oct 2 2023 and 160 days since Dec 11, 2023. Am I missing some reason this should be applicable?

Regarding the third subpoena mentioned, what authority does the city of Chicopee, or the state of Massachusetts have to enforce the laws of the state of Pennsylvania or any other state? I question the validity of withholding this for reasons described in the 10th Amendment to the US constitution. If you disagree, you may want to inform the state of Texas that I am in possession of marijuana, as they may wish to extradite me for prosecution. You can do that [here](#).

Best,

Jonathan Gerhardson

On Tue, May 14, 2024 at 10:04 AM John J. Ferriter <jferriter@ferriter.com> wrote:

Good morning,

The City believes exemptions (a) and (f) extend to the emails as “requests” or “inquiries.” If you know of any Mass. case that holds otherwise, please email us a copy.

1. The subpoena from the Mass. DA cites 18 USC sec. 2703 and sec. 2705, and provides “you are hereby instructed NOT TO DISCLOSE the existence of this request, as any such disclosure could endanger the life or physical safety of an individual”(emphasis in original). The instruction includes the “existence of this request”, not just the subpoena itself.
2. The subpoena from the Mass. AG cites 18 USC 2705 and provides “to not disclose the existence of this request” as disclosure would “hinder the investigation.” An email is evidence of the “existence of the request.” Once again, please send any case that holds the contrary.
3. The subpoena from the Penn. DA cites 18 Pa CS 5742.1 to provide to not disclose “the existence of this subpoena inquiry” as it would “impede the investigation being conducted” relating to sexual abuse of children. The prohibition extends to the “inquiry” which would include an email. Please share any case to the contrary.

Respectfully,

John J. Ferriter, Esquire

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413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Jon Gerhardson <jon.gerhardson@gmail.com>

Sent: Thursday, May 9, 2024 3:22 PM

To: John J. Ferriter <jferriter@ferriter.com>

Cc: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Natalie Colberg <ncolberg@celd.com>; Debbie A. Beaudry <dbeaudry@ferriter.com>
Subject: Re: SPR24/1374 Appeal - Response

Thanks for this.

I also asked for records of communications between Chicopee/CELD and the issues of these subpoenas. Are there no emails etc. discussing these?

On Thu, May 9, 2024, 12:27 PM John J. Ferriter <jferriter@ferriter.com> wrote:

We are correcting the email for Mr. Gerhardson. Thank you.

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413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Sent: Thursday, May 9, 2024 12:23 PM
To: John J. Ferriter <jferriter@ferriter.com>; on.gerhardson@gmail.com
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; ncolberg@celd.com; Debbie A. Beaudry <dbeaudry@ferriter.com>
Subject: RE: SPR24/1374 Appeal - Response

Good afternoon,

Thank you for your email.

Regards,

Jeff Gottfredsen

Senior Attorney | Public Records Division

Office of the Secretary of the Commonwealth

One Ashburton Place, Room 1719 | Boston, MA 02108

617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

From: John J. Ferriter <jferriter@ferriter.com>

Sent: Thursday, May 9, 2024 12:09

To: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>; on.gerhardson@gmail.com

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; ncolberg@celd.com; Debbie A. Beaudry <dbeaudry@ferriter.com>

Subject: FW: SPR24/1374 Appeal - Response

Dear Mr. Gottfredsen,

We represent the City of Chicopee Electric Light Department (City) and your email below from yesterday was referred to us for reply.

The City received the following subpoenas investigating criminal sexual abuse of children during the relevant time period:

1. 10/2/23 from a Massachusetts District Attorney and ordering non-disclosure under 18 USC sec. 2703(c) and 2705(1)(B).
2. 12/11/23 from the Massachusetts Attorney General and ordering non-disclosure under 18 USC sec. 2705.
3. 3/18/24 from a Pennsylvania District Attorney and ordering non-disclosure under 18 Pa. C.S. 5743.1(a)(7).

The City believes exemptions (a) and (f) prevent disclosure. Exemption (a) applies based on the specific statutes cited above by each law enforcement agency. Exemption (f) applies because each law enforcement agency certified each subpoena was issued as part of an active criminal investigation, and indicated disclosure could endanger the life or safety of a person or result in destruction of evidence.

The City supports law enforcement agencies and does not want to jeopardize any ongoing investigations or jeopardize the safety of anyone.

Sincerely,

John J. Ferriter, Esquire

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413 535 4200

413 535 4201 fax

THIS CONFIDENTIAL EMAIL IS NOT AN OPINION, THIS EMAIL IS NOT SIGNED AND IT DOES NOT CONTAIN TAX ADVICE.

From: Jon Gerhardson <jon.gerhardson@gmail.com>

Sent: Tuesday, May 7, 2024 3:55 PM

To: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>

Cc: Natalie Colberg <ncolberg@celd.com>; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Subject: Re: SPR24/1374 Appeal Acknowledgement

Jefferey Gottfredsen,

I am in receipt of this email. I believe the wording of my original appeal lacked some clarity that I would like to amend now. Specifically, I believe under the law, CEL has an obligation to list the document and describe the reason for each record's withholding. I do not believe they can simply say a number of documents exist and they're all exempt.

I'd also like to point out that if any of the records in question may have been generated by the federal government, they are still responsive to my request. I can't know if that's the case here due to the RAO's vagueness in their response, but I suspect it is a possibility. See RAHIMAH RAHIM vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT ([SJC-12884](#)).

On Mon, May 6, 2024 at 4:40 PM Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us> wrote:

Dear Records Custodian,

This office has received an appeal relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you are able to provide further information or have any questions relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832.

Given that the Supervisor of Records must issue a determination within ten business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Thank you,
Jeff Gottfredsen

Senior Attorney | Public Records Division
Office of the Secretary of the Commonwealth
One [Ashburton Place, Room 1719 | Boston, MA 02108](#)
617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

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Jon Gerhardson <jon.gerhardson@gmail.com>

Tue, May 21, 2024 at 12:22 PM

To: "John J. Ferriter" <jferriter@ferriter.com>

Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Hello,

I would like to request an extension of 10 days to respond to Mr. Ferriter.

Best,
Jonathan Gerhardson
[Quoted text hidden]

Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>

Thu, May 23, 2024 at 11:41 AM

To: "John J. Ferriter" <jferriter@ferriter.com>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, "jon.gerhardson@gmail.com" <jon.gerhardson@gmail.com>

Good afternoon,

In keeping with the regulations set out in 950 C.M.R. 32.08(2)(a), the determination letter for this appeal is currently due from our office on June 4, 2024.

However, in light of Mr. Gerhardson's email below, please let me know if you would agree to a ten business day extension until Tuesday, June 18th, for our office to issue a determination letter. This will permit Mr. Gerhardson to respond as he requests below, and will allow our office to review the matter as thoroughly as possible.

Please reply to this email to let me know whether you are willing to agree to the extension.

Thank you,

Jeff Gottfredsen

Senior Attorney | Public Records Division

Office of the Secretary of the Commonwealth

One [Ashburton Place, Room 1719](#) | [Boston, MA 02108](#)

617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

[Quoted text hidden]

John J. Ferriter <jferriter@ferriter.com>

Thu, May 23, 2024 at 12:13 PM

To: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, "jon.gerhardson@gmail.com" <jon.gerhardson@gmail.com>

Good afternoon,

As an accommodation, the City will agree to one 10 day extension.

Thank you,

John J. Ferriter, Esquire

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413 535 4200

413 535 4201 fax

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[Quoted text hidden]

Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>

Thu, May 23, 2024 at 4:14 PM

To: "John J. Ferriter" <jferriter@ferriter.com>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, "jon.gerhardson@gmail.com" <jon.gerhardson@gmail.com>

Good afternoon,

Thank you for confirming.

[Quoted text hidden]

John J. Ferriter <jferriter@ferriter.com>

Thu, May 23, 2024 at 4:16 PM

To: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>

Cc: "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, "jon.gerhardson@gmail.com" <jon.gerhardson@gmail.com>

You're welcome.

On May 23, 2024, at 4:14 PM, Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us> wrote:

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>

Thu, May 23, 2024 at 6:58 PM

To: "John J. Ferriter" <jferriter@ferriter.com>

Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Thank you both for your patience in this matter. I'm wrapping up an unrelated project within the next week that demands my full attention.

Best,
Jonathan Gerhardson

[Quoted text hidden]

John J. Ferriter <jferriter@ferriter.com>

Thu, May 23, 2024 at 7:02 PM

To: Jon Gerhardson <jon.gerhardson@gmail.com>

Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

You're welcome.

On May 23, 2024, at 6:58 PM, Jon Gerhardson <jon.gerhardson@gmail.com> wrote:

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: "John J. Ferriter" <jferriter@ferriter.com>

Tue, Jun 4, 2024 at 4:15 PM

Hello,

If I could please ask for an additional extension until the end of business June 10 to reply, it would be appreciated.

I had an important deadline May 31 that demanded my full attention. I'm seeking guidance to make sure I am understanding the nuances of 18 usc 2703 and 2705 before I reply, so as not to waste CELD's or the Secretary of Commonwealth's office's time.

Thank you.

Best,
Jonthan Gerhardson
[Quoted text hidden]

John J. Ferriter <jferriter@ferriter.com>
To: Jon Gerhardson <jon.gerhardson@gmail.com>
Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Wed, Jun 5, 2024 at 8:06 AM

Good morning,

That's fine.

[Quoted text hidden]

Jon Gerhardson <jon.gerhardson@gmail.com>
To: "John J. Ferriter" <jferriter@ferriter.com>
Cc: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Thu, Jun 6, 2024 at 4:04 AM

In [RAHIMAH RAHIM vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT](#), the court concluded that public records that a district attorney received from the Federal Bureau of Investigation were not exempt from disclosure under the public records law.

In that case, when the DA was given records from the FBI, with instructions not to disclose them under the public records law, the court held that the FBI materials qualify as "public records" under the public records law; that the materials do not qualify for exemption (a); and that some of the materials qualify for exemption (f), but the rest must be remanded to determine whether exemption (f) applies.

I see a similarity here. CELD was given records by the DA. It is established that these are public records. I argue that exemption (a) should apply to none of these records.

Going back to *Rahim*, the court establishes that it is "the burden is on the district attorney 'to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law' before a court may conclude that exemption (f) applies."

Here, I am asking CELD for these records, and believe it is their burden to provide such proof.

I don't believe they have for a couple reasons:

1. The information provided to me does not follow [Section 1002 - Requirement of Original \(Best Evidence Rule\)](#) because Chicopee has the best evidence (the original records) and has chosen not to provide it.

Note that, as cited in *Rahim*, [WBZ-TV4 vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT](#) additionally supports the doctrine that exemption (f) does not provide a blanket exemption for investigatory materials.

As I have noted previously, at least two out of a surprisingly low 3 subpoenas served to CELD, are past 90 days old.

To my knowledge preclusion to disclose orders exceeding 90 days must be signed by a judge. But on May 6, a CELD employee told me none of them had been signed by judges. Therefore these gag orders should be void, and all responsive records to my original request should be released without further delay.

Thank you for reading and for your patience.

Best,
jonathan Gerhardson

33

[Quoted text hidden]



Jon Gerhardson <jon.gerhardson@gmail.com>

SPR24/1374 Determination

5 messages

Pierce, Patrick (SEC) <Patrick.Pierce@sec.state.ma.us> Fri, May 17, 2024 at 9:19 AM
To: "jon.gerhardson@gmail.com" <jon.gerhardson@gmail.com>, "ncolberg@celd.com" <ncolberg@celd.com>, "recordsreq@celd.com" <recordsreq@celd.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Good Morning,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Patrick Pierce (He/Him/His)


Office of the Secretary of the Commonwealth

Public Records Division

One [Ashburton Place, Room 1719](#)

[Boston, MA, 02108](#)

617-727-2832

 **spr241374.pdf**
131K

Jon Gerhardson <jon.gerhardson@gmail.com> Fri, May 17, 2024 at 10:15 AM
To: "Pierce, Patrick (SEC)" <Patrick.Pierce@sec.state.ma.us>
Cc: Natalie Colberg <ncolberg@celd.com>, recordsreq@celd.com, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Acknowledged.

On Fri, May 17, 2024, 9:19 AM Pierce, Patrick (SEC) <Patrick.Pierce@sec.state.ma.us> wrote:

Good Morning,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This

determination is attached and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Patrick Pierce (He/Him/His)

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA, 02108

617-727-2832

Jon Gerhardson <jon.gerhardson@gmail.com>

Mon, May 20, 2024 at 11:32 AM

To: "Pierce, Patrick (SEC)" <Patrick.Pierce@sec.state.ma.us>

Cc: Natalie Colberg <ncolberg@celd.com>, recordsreq@celd.com, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Hello, I would like to appeal this determination. Please let me know what the next steps would be.

On Fri, May 17, 2024 at 10:15 AM Jon Gerhardson <jon.gerhardson@gmail.com> wrote:
Acknowledged.

On Fri, May 17, 2024, 9:19 AM Pierce, Patrick (SEC) <Patrick.Pierce@sec.state.ma.us> wrote:

Good Morning,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Patrick Pierce (He/Him/His)

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA, 02108

617-727-2832

Manning, Michael (SEC) <Michael.Manning@sec.state.ma.us>
To: Jon Gerhardson <jon.gerhardson@gmail.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Mon, May 20, 2024 at 12:00 PM

Good Afternoon Mr. Gerhardson,

Thank you for your email. SPR24/1374 was closed in light of Chicopee Electric Light's May 9th and May 14th supplemental responses. If you remain unsatisfied with the responses provided, you may wish to file a further appeal with this Division pursuant to 950 C.M.R. 32.08(1). If you are seeking to file a further appeal, please state your basis as to what you are specifically appealing/taking issue(s) with towards the most recent responses provided. See 950 C.M.R. 32.08(1).

Best,

Michael Manning

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

617-727-2832

Michael.Manning@sec.state.ma.us

From: Jon Gerhardson <jon.gerhardson@gmail.com>

Sent: Monday, May 20, 2024 11:33 AM

To: Pierce, Patrick (SEC) <Patrick.Pierce@sec.state.ma.us>

Cc: Natalie Colberg <ncolberg@celd.com>; recordsreq@celd.com; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Subject: Re: SPR24/1374 Determination

Hello, I would like to appeal this determination. Please let me know what the next steps would be.

On Fri, May 17, 2024 at 10:15 AM Jon Gerhardson <jon.gerhardson@gmail.com> wrote:

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If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Patrick Pierce (He/Him/His)

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA, 02108

617-727-2832

----- Forwarded message -----

From: "John J. Ferriter" <jferriter@ferriter.com>

To: "Gottfredsen, Jeffrey (SEC)" <Jeffrey.Gottfredsen@sec.state.ma.us>, "on.gerhardson@gmail.com" <on.gerhardson@gmail.com>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, "ncolberg@celd.com" <ncolberg@celd.com>, "Debbie A. Beaudry" <dbeaudry@ferriter.com>

Bcc:

Date: Thu, 9 May 2024 16:08:37 +0000

Subject: FW: SPR24/1374 Appeal - Response

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Bcc:

Date: Tue, 14 May 2024 14:04:26 +0000

Subject: RE: SPR24/1374 Appeal - Response 5/14/24

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Office of the Secretary of the Commonwealth

One Ashburton Place, Room 1719 | Boston, MA 02108

617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

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Sent: Thursday, May 9, 2024 12:09

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3 attachments



FW: SPR24/1374 Appeal - Response.eml

34K



RE: SPR24/1374 Appeal - Response 5/14/24.eml

59K



spr241374.pdf

131K

Jon Gerhardson <jon.gerhardson@gmail.com>

Mon, May 20, 2024 at 2:35 PM

To: "Manning, Michael (SEC)" <Michael.Manning@sec.state.ma.us>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Micheal,

Thank you for your timely response. I was very busy last week and with your determination coming only a few days after the supplemental response, I did not have the opportunity to address it.

There are three points that form the basis of my appeal. I am responding to the most recent information provided by CELD on May 14, and that email is attached.

1. CELD said the records they were providing were in relation to CSAM specifically, but my request was more general than that and I question the adequacy of their search for records. Any clarification on how this search was performed would be helpful. If there are other records which may legally be withheld, I believe that MGL 66 10 still requires the enumeration of these records, as well as the basis and explanation for why they are being withheld in part or whole.

Islamic Shura v. FBI is likely not directly relevant here, being a FOIA case, but the spirit of its findings should be similarly applicable.

2. The federal law cited in the two MA subpoenas is 18 USC 2705. It's possible I've overlooked something here but I'm reading what I believe to be the relevant section of this law:

where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under [section 2703\(b\) of this title](#) for **a period not to exceed ninety days** upon the execution of a written certification of a [supervisory official](#) that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection

It's been at the time of writing, 231 days since Oct 2 2023 and 161 days since Dec 11, 2023. What statutory basis can be claimed for continued withholding?

3. The third subpoena mentioned cites PA law. To the best of my knowledge Massachusetts has no formal reciprocity agreement with PA, and residents of the state of Massachusetts are not subject to Pennsylvania laws while not inside of Pennsylvania. While I assume Pennsylvania can issue a subpoena just fine, I fail to understand how a gag order based on a different state's laws can override those of the Commonwealth's in this context, and I wonder if this does not conflict with the tenth amendment.

Best,
Jonathan Gerhardson

On Mon, May 20, 2024 at 12:00 PM Manning, Michael (SEC) <Michael.Manning@sec.state.ma.us> wrote:

Good Afternoon Mr. Gerhardson,

Thank you for your email. SPR24/1374 was closed in light of Chicopee Electric Light's May 9th and May 14th supplemental responses. If you remain unsatisfied with the responses provided, you may wish to file a further appeal with this Division pursuant to 950 C.M.R. 32.08(1). If you are seeking to file a further appeal, please state your basis as to what you are specifically appealing/taking issue(s) with towards the most recent responses provided. See 950 C.M.R. 32.08(1).

Best,
Michael Manning

Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832
Michael.Manning@sec.state.ma.us

From: Jon Gerhardson <jon.gerhardson@gmail.com>
Sent: Monday, May 20, 2024 11:33 AM
To: Pierce, Patrick (SEC) <Patrick.Pierce@sec.state.ma.us>
Cc: Natalie Colberg <ncolberg@celd.com>; recordsreq@celd.com; SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
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 **SPR24_1374 Appeal - Response 5_14_24.eml**
67K